

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** February 19, 2021

Thru: Laurie Gharis, Chief Clerk
Toby Baker, Executive Director

From: Ryan Vise, Director
External Relations Division

Docket No.: 2020-0820-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 328, Waste Minimization and Recycling
Governmental Entity Recycling Rules Update
Rule Project No. 2020-041-328-AD

Background and reason(s) for the rulemaking:

The adopted rulemaking implements Texas Health and Safety Code (THSC), §361.425 and §361.426 to exempt certain governmental entities from compliance with recycling requirements. THSC, §361.425 and §361.426 require that governmental entities establish a recycling program, create procedures for a recycling program, and give preference in purchasing to products made of recyclable materials if applicable criteria are met.

The rulemaking will apply to governmental entities pertaining to purchasing preferences for products made of recycled materials. The adopted rules will also provide an exemption available to governmental entities, if compliance with the recycling program or purchasing preferences will create a hardship for the governmental entity.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The rulemaking repeals §328.203 and §328.204; and simultaneously adopts new §328.203 and §328.204 in order to restructure the rules to provide clarity to Chapter 328.

B.) Scope required by federal regulations or state statutes:

The rulemaking will implement the requirements of THSC, §361.425 and §361.426.

C.) Additional staff recommendations that are not required by federal rule or state statute:

No additional staff recommendations are required.

Statutory authority:

The rules are adopted under Texas Water Code (TWC), §5.102, which provides the commission with the general powers to carry out its duties under the TWC; TWC, §5.103, which authorizes the commission to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state; and TWC, §5.105, which authorizes the commission by rule to establish and approve all general policy of the commission. The rules are also adopted under THSC, §361.024, which authorizes the commission to adopt rules regarding the management and control of solid waste; THSC, §361.425, which provides that the commission shall adopt rules for administering governmental entity recycling programs; and THSC, §361.426, which

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provides that the commission shall adopt rules for administering governmental entity preferences for recycled products.

Effect on the:

A.) Regulated community:

The rulemaking will clarify the opportunity for governmental entities to become exempt from implementing recycling programs, from including certain recyclable materials from their recycling program, and/or from giving preference in purchasing to products made of recycled materials.

B.) Public:

No public impacts are anticipated.

C.) Agency programs:

External Relations Division would complete rulemaking. The rules will not create a group of affected governmental entities who are not already affected by statute.

Stakeholder meetings:

The commission did not hold any stakeholder meetings related to this rulemaking; however, a virtual rule public hearing was offered.

Public comment:

The commission held a public hearing on November 17, 2020. The comment period closed on November 24, 2020. No public comments were received.

Significant changes from proposal:

None.

Potential controversial concerns and legislative interest:

There are no controversial concerns or legislative interest.

Does this rulemaking affect any current policies or require development of new policies?

The rulemaking will not require development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

The Texas Commission on Environmental Quality specifically requires this rulemaking. There are no alternatives.

Key points in the rulemaking adoption schedule:

Texas Register proposal publication date: October 23, 2020

Anticipated *Texas Register* adoption publication date: March 26, 2021

Anticipated effective date: April 1, 2021

Six-month *Texas Register* filing deadline: April 23, 2021

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Attachments:

None

cc: Chief Clerk, 2 copies
Executive Director's Office
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